151.

SUPREME COURT OF THE UNITED STATES.

No. 98.

ARCHIBALD K. SMITH, PL'FF IN ERROR,

VERSUS

ALFRED CLAPP.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

Pleas had before the Honorable the Circuit Court of the United States, for the ninth judicial circuit, southern district of Alabama, at a term of said court begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court.

Be it remembered, that heretofore, to wit, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and thirty-eight, Alfred Clapp sued out of said court his writ of capias ad respondendum against Archibald K. Smith and Neill Munn, in the words and figures following, to wit:

ALFRED CLAPP
vs.
A. K. SMITH & NEILL MUNN.

UNITED STATES OF AMERICA, *Circuit Court of the United States, for the Ninth Judicial Circuit and Southern District of Alabama.*

The President of the United States to the Marshal of said district greeting:

You are hereby commanded to take the bodies of Archibald K.

Smith and Neill Munn, who are citizens of the State of Alabama, and them safely keep, so that you have them before the Hon. the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of October next, to answer unto Alfred Clapp, who is a citizen of the State of New York, in a plea of trespass on the case in assumpsit, to the damage of the said plaintiff of five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the thirtieth day of August, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: DAVID FILES,
Cl'k So. Dist. Ala.

This action is founded on a note or instrument of writing, of which the following is a copy, viz:

$3,250. On or before the first day of May next, I promise to pay John Barge, or bearer, three thousand two hundred and fifty dollars, for value received, this 21st November, 1836.

(Signed) A. K. SMITH,
NEILL MUNN.

Of which note the plaintiff is holder.

A. P. BAGBY, *Pl'ff Att'y.*

Received 29 July, 1837; executed 12 Sept'r, 1837, on A. K. Smith, Niell Munn.

Not found. R. L. CRAWFORD, *M.*
By D. WHITE, *D. M.*

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven, the plaintiff filed his declaration in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Circuit Court of the United States, for the Ninth Judicial Circuit, Southern District of Alabama, at October Term, A. D.* 1837.

Alfred Clapp, who is a citizen of the State of New York, by his attorney, complains of Archibald K. Smith, who is a citizen of the

State of Alabama, being in custody, *and* &c., in a plea of trespass on the case; for that whereas the said *said* defendant and one Neill Munn, who is not served with process, heretofore, to wit, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and thirty-six, at the southern district of Alabama, and within the jurisdiction of this court, made their certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay on the first day of May next insuing, the date of said promissory note, to one John Barge, or bearer, the sum of three thousand two hundred and fifty dollars, for value received; and then and there delivered the said promissory note to the said John Barge; and the said John Barge, to whom or to the bearer of said promissory note payment of the said sum of money therein specified was to be made, after the making of the said promissory note, and before the payment of the said sum of money therein specified, to wit, on the first day of December, one thousand eight hundred and thirty-six, at the southern district of Alabama aforesaid, duly assigned over and delivered the said promissory note to the said plaintiff, who then and there became, and was and still is, the lawful bearer thereof, and entitled to demand and receive payment of the said sum of money in said promissory note specified, according to the tenor and effect thereof; of all which the said defendant afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, had notice. By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the plaintiff the said sum of money in said promissory note specified, according to the tenor and effect of said promissory note; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect of said promissory note; yet the said defendant, tho' often requested, has not paid to the said plaintiff the said sum of money there specified, or any part thereof, but so to do hath hitherto wholly neglected and refused, and still neglects and refuses, to the damage of the plaintiff five thousand dollars; and therefore he brings suit.

A. P. BAGBY,
Attorney for Plaintiff.

General DEMMER, GORDON,
CAMPBELL & CHANDLER,
Att'ys for Def'ts.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court, the following proceedings were had, to wit:

Discontinued as to Munn.

This day came the plaintiff, by his attorney, and the defendant, having withdrawn his plea, says nothing in bar or preclusion of said plaintiff's action, whereby the said plaintiff therein against him remains altogether undefended. It is therefore considered by the court that the said Alfred Clapp, plaintiff, do recover against the said Archibald K. Smith, defendant, the sum of thirty-five hundred and fifty-eight dollars for his damages, as assessed by the clerk of this court, together with his costs.

And afterwards, to wit, on the 24th day of May, in the year of our Lord one thousand eight hundred and thirty-eight, the defendant filed in the said court his writ of error bond, in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Alabama.

ALFRED CLAPP
vs.
ARCHIBALD K. SMITH, NEILL MUNN.

Know all men by these presents, that we, Archibald K. Smith, Robert G. Gordon, and John S. McKain, are held and firmly bound unto Alfred Clapp, in the penal sum of seven thousand one hundred and sixteen $\frac{46}{100}$ dollars, to be paid to them, their heirs and assigns, for which payment well and truly to be made, we and each of us bind ourselves and each of our heirs, executors and assigns, jointly and severally, firmly by these presents, sealed with our seals, and dated this 24th day of May, A. D. 1838.

The condition of the above obligation is such, that whereas the above-bound Archibald K. Smith has sued out a writ of error to reverse a judgement, in the circuit court of the United States for the southern district of Alabama, in which Alfred Clapp is plaintiff, and the said Archibald K. Smith and Neill Munn are defendants; now, if the said Archibald K. Smith shall prosecute his writ of error to effect, or failing therein, shall pay and satisfy all such damages and costs that the plaintiff aforesaid may sustain, then this obligation to be void; otherwise to be and remain in full force and effect.

A. K. SMITH, [SEAL.]
R. G. GORDON, [SEAL.]
JNO. S. McKAIN, [SEAL.]

Signed, sealed, and delivered, in presence of
E. C. SOUTHWORTH.

I, David Files, Clerk of the circuit court of the United States,

for the ninth judicial circuit and southern district of Alabama, do hereby certify, that the above and beforegoing is a true copy of the record in a certain cause, wherein Alfred Clapp is plaintiff, and A. K. Smith and Neill Munn defendants.

In testimony whereof, at office in the city of Mobile, I [SEAL.] have hereunto set my hand, and affixed the seal of the said circuit court, this 25th day of December, A. D. 1838.

DAVID FILES.
Cl'k Sou. Dist. Ala.